

c

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS

Plaintiff

v.

CARDIAC SCIENCE, INC.

and

COMPLIENT CORPORATION

Defendants

**AFFIDAVIT OF  
DONALD C. HUTCHINS**

CA. 04-30126-MAP

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
JUL 20 4 11:38 PM  
CLERK'S OFFICE

NOW COMES DONALD C. HUTCHINS and upon being duly sworn,  
states that:

1. I am over 18 years of age and have personal knowledge of the matters attested to herein.
2. Cardiac Science's Memorandum of Law in Opposition to the Plaintiff's Motion for Relief from Judgment includes errors and misrepresentations designed to confuse the Court. Here is my sworn testimony to clarify these issues.
3. I admit to a failure in following court procedure with the tardiness of my reply Cardiac Science's Motion for Summary Judgment. However, my Answer has been filed and the delay has posed no hardship to Cardiac Science.
4. It should be noted that Cardiac Science has been and continues to be guilty of not supplying any discovery materials to me. For example, Cardiac Science's

Attorney, Wendy Cusick promised to send me a copy of my Deposition taken January 27, 2005 to spare me *Cotuogno Court Reporting's* reproduction fees of \$2.50 per page. The only pages I have ever received were the few pages attached to the Summary Judgment Memo that had been hand picked to deceive the Court.

5. Another failure in procedure can be seen in Exhibit A attached, Cardiac Science's Request for Indemnification from the Compliant Corporation pursuant to Section 11.2(a) of the Asset Purchase Agreement. This Request is a virtual admission by Cardiac Science that my claims in Civil Action No. 04-30126-MAP are valid. These documents came to me as part of Ohio Case No. 04 CV 540066. Cardiac Science's failure to provide these documents to me through discovery is certainly a breach in procedure and fair play expected by this Court.
6. Information provided by Compliant in Ohio Case No. 04-30126-MAP discloses that Compliant did indemnify Cardiac Science with the return of 512,500 shares of Cardiac Science stock. Again, this admission by Compliant that my allegations contained in this Action are valid was never forwarded to me as demanded by the Civil Code. My delinquency failings are insignificant in this Action compared to the Defendant's habit of withholding evidence.
7. The letter that Cardiac Science claims was sent to me that I have attached as Exhibit B, is actually a letter to Judge Ponsor from Attorney Skaar that was copied to me. Attorney Skaar states, As the Courts is aware, Mr. Hutchins is *pro se*. As such, perhaps it may be best to hold an oral argument in order to give Mr. Hutchins an opportunity to appear and argue his case in opposition to Summary Judgment before the court rules."

8. There has been no Case Management Conference in this Action. The Conference was cancelled due to impending Motions to Dismiss, Hearings on these Motions to Dismiss which were filed by Defendants were delayed twice until reset for 6/30/05 per ENDORSED ORDER [54] attached as Exhibit C.
9. Upon receiving a copy of Attorney Skaar's letter to Judge Ponsor suggesting I be given the opportunity to "appear and argue," I assumed that this oral argument would take place at the hearing scheduled for 6/30/05. I prepared arguments for this Hearing. This Hearing was never held nor has there ever been any notification that it was cancelled. As a result, I never got the opportunity that Attorney Skaar suggested as an allowance for my *pro se* status.
10. I have filed an Appeal for relief from this Order granting the Defendant, Cardiac Science, Inc.'s 55 Motion for Summary Judgment. The Appeal will show that Cardiac Science continues to manufacture and sell products that display my patent number and infringe my copyrights. The Appeal will show that Cardiac Science bases its patent rights on fraudulent documents and the deceit of the Compliant Corporation.
11. If a pawnshop receives stolen goods based on a fraudulent bill of sale, the pawnshop has no ownership in these goods. Exhibit A recognizes that Cardiac Science has purchased assets stolen from me and that the Compliant Corporation

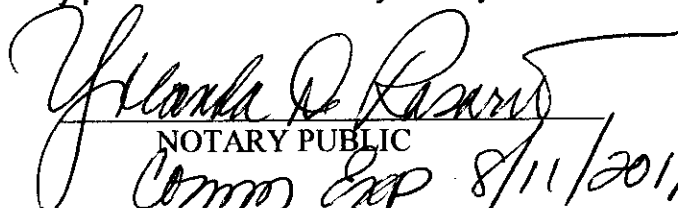
has deceived Cardiac Science through means of the Asset Purchase Agreement.

The time has come for the Court to allow this case to go forward.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
DONALD C. HUTCHINS

Sworn to before me and subscribed in my presence the 20<sup>th</sup> day of July 2005.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Comm Exp 8/11/2011

# **EXHIBIT A**

**PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.**

*Patent, Trademark, Copyright, Internet & Related Causes*

RANDALL T. SKAAR  
(612) 349-5749  
skaar@ptslaw.com

July 28, 2004

**Via Federal Express**

Mr. Steven W. Lindseth  
Compliant Corporation  
c/o 4670 Richmond Road  
Suite 300  
Warrensville Heights, OH 44128

**Via Federal Express**

Mr. Brad Scarbrough  
U.S. Bank National Association  
633 West Fifth Street  
24<sup>th</sup> Floor  
Los Angeles, CA 90071

**Via Federal Express**

Mr. Gerald A. Monroe  
Calfee, Halter & Griswold, L.L.P.  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, OH 44114-2688

RE: Hutchins' Third-Party Claim  
Our File No. 1798.161-LIT-01

Gentlemen:

Please be advised that this law firm represents Cardiac Science, Inc., in the above-referenced matter.

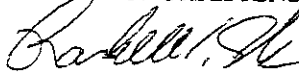
Enclosed and served upon you by Federal Express, please find the following documents:

1. Officer's Certificate and Request for Indemnification by Cardiac Science, Inc.; and
2. Hutchins' Complaint.

Please contact me if you have any questions.

Very truly yours,

PATTERSON, THUENTE,  
SKAAR & CHRISTENSEN, P.A.



Randall T. Skaar

RTS/cb  
Enclosures

**OFFICER'S CERTIFICATE AND  
REQUEST FOR INDEMNIFICATION BY CARDIAC SCIENCE INC.**

---

**To:**

Attn: Steven W. Lindseth  
Compliant Corporation  
c/o 4670 Richmond Road  
Suite 300  
Warrensville Heights, Ohio 44128

Attn: Brad Scarbrough  
U.S. Bank National Association  
633 West Fifth Street  
24<sup>th</sup> Floor  
Los Angeles, California 90071

Attn: Gerald A Monroe, Esq.  
Calfee, Halter & Griswold LLP  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, Ohio 44114-2688

**PLEASE TAKE NOTICE:**

A. Pursuant to section 3(a) of the General Escrow Agreement dated October 21, 2003 between Compliant Corporation, Cardiac Science, Inc. and U.S. Bank National Association; and


B. Pursuant to Section 11.2(a) of the Asset Purchase Agreement ("APA") dated October 21, 2003, that:

1. Cardiac Science hereby requests indemnification for the claims made against Cardiac Science in recently filed lawsuit against Cardiac Science in the lawsuit Donald C. Hutchins v. Cardiac Science, Inc. (04-30126-MAP) (D.Mass).
2. Cardiac Science asserts that its request for indemnification is based upon at least Sections 1.2(i), 2.2(b), 2.2(d), 2.2(h), 2.2(i) and 2.2(m) of the APA.
3. Mr. Hutchins' claims (see attached Complaint and exhibits thereto) seeks to have Cardiac Science provide compensation for an alleged failure of CPR L.P. to provide Mr. Hutchins 7.5% of the proceeds of any sale of partnership interest in CPR L.P. as provided in the CPR Prompt License and the CPR Partnership Agreement. The alleged obligation to compensate Mr. Hutchins is a retained liability pursuant to the sections of the APA identified in paragraph 3, above.

4. As a result and consequence of Compliant's alleged failure to compensate Mr. Hutchins per the CPR Prompt License and the CPR Partnership Agreement, he has initiated claims of copyright and patent infringement against Cardiac Science.

5. The attached Complaint and Exhibits for Mr. Hutchins' lawsuit sets forth the alleged factual basis for his claims and the claimed amount of damages, wherein money damages are claimed at least in the amount of \$3,795,000.

Dated: 7/27/2004

  
\_\_\_\_\_  
Mr. Kenneth F. Olson,  
Chief Technical Officer  
Cardiac Science, Inc.

Enclosure: Hutchins' Complaint

Cc:

Attn: Shivbir S. Grewal, Esq.  
Stradling, Yocca, Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660



## **EXHIBIT B**

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.

*Patent, Trademark, Copyright, Internet & Related Causes*

RANDALL T. SKAAR  
(612) 349-5749  
[skaar@ptslaw.com](mailto:skaar@ptslaw.com)

June 13, 2005

The Honorable Michael A. Ponsor  
Federal Building & Courthouse  
1550 Main Street  
Springfield, MN 01103

RE: Donald C. Hutchins v. Cardiac Science Inc.  
Civil Action No. 04-30126-MAP  
Our File No. 1798.161-LIT-01

Dear Judge Ponsor:

Cardiac Science filed its Motion for Summary Judgment on May 13, 2005. Plaintiff Donald Hutchins has not filed an answering brief. Because Mr. Hutchins has not filed an answering brief, Cardiac Science will not be filing a Reply and thus, we respectfully request the Court take up the Motion.

As the Court is aware, Mr. Hutchins is *pro se*. As such, perhaps it may be best to hold an oral argument in order to give Mr. Hutchins an opportunity to appear and argue his case in opposition to Summary Judgment before the court rules.

Very truly yours,

PATTERSON, THUENTE,  
SKAAR & CHRISTENSEN, P.A.



Randall T. Skaar

RTS/mjs

cc: Mr. Donald Hutchins

189027

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MINNEAPOLIS, MINNESOTA • ATLANTA, GEORGIA

## **EXHIBIT C**

United States District Court  
District of Massachusetts

Notice of Electronic Filing

The following transaction was received from Lindsay, Maurice entered on 5/6/2005 at 1:34 PM EDT and filed on 5/6/2005

Case Name: Hutchins v. Cardiac Science, Inc.

Case Number: 3:04-cv-30126

Filer:

Document Number:

Docket Text:

Judge Michael A Ponsor : ENDORSED ORDER entered granting [54] Letter construed as a motion to continue; Motion ALLOWED. Hearing reset to 6/30/05 at 2:00 PM. cc/cl (Lindsay, Maurice)

The following document(s) are associated with this transaction:

3:04-cv-30126 Notice will be electronically mailed to:

John J. Egan jjegan@eganflanagan.com

Paul H. Rothschild prothschild@bacon-wilson.com, mcody@bacon-wilson.com;lmorrison@bacon-wilson.com

3:04-cv-30126 Notice will not be electronically mailed to:

Donald C. Hutchins  
1047 Longmeadow Street  
Longmeadow, MA 01106

Randall T. Skaar  
Patterson, Thunte, Skaar & Christensen, P.A.  
4800 IDS Center  
80 South Eighth St.  
Minneapolis, MN 55402

Scott G. Ulbrich  
Patterson, Thunte, Skaar & Christensen, P.A.  
4800 IDS Center  
80 South Eighth St.  
Minneapolis, MN 55402